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FEDERAL ELECTION COMMISSION
Washington, DC 20463

August 16, 2000

MEMORANDUM

AGENDA ITEM

For Meeting of: 8-24-00

TO: The Commission

THROUGH: James A. Pehrson
Staff Director

FROM: Lawrence M. Noble
General Counsel

N. Bradley Litchfield
Associate General Counsel

Michael G. Marinelli
Staff Attorney

SUBJECT: Draft AO 2000-21

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for August 24, 2000.

Attachment

1
2 ADVISORY OPINION 2000-21

3
4 John Ciampoli
5 Gentile and Ciampoli
6 220 Old Country Road
7 Mineola, New York 11501
8

DRAFT

9 Dear Mr. Ciampoli:

10
11 This refers to your letter dated July 12, 2000, with enclosures, requesting an
12 advisory opinion concerning the status of the State Committee of the New York State
13 Conservative Party ("the Party") as a State committee of a political party under the
14 Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission
15 regulations.

16 Your request includes the Party rules ("the rules") which detail various aspects of
17 the organization of the Party. The rules prescribe the manner in which the State
18 Committee ("the Committee"), using several different subgroups such as its State
19 executive committee, acts as the executive authority for the Party and chooses the Party
20 officers.¹ The rules further detail the procedures for the endorsement and the recognition
21 of county Party committees. The request includes several supporting documents: an
22 affidavit of Michael R. Long, Chairman of the Party, an affidavit from Representative
23 Vito J. Fossella, a former and current candidate of the Party, and an affidavit from
24 officials of the New York State Board of Elections.

25 Under the Act and Commission regulations, the term "State committee" means the
26 organization which, by virtue of the bylaws of a political party, is responsible for the day-

¹ The Federal political committee registered by the Party is the New York State Conservative Party (formerly New Yorkers for a Conservative Majority) which first filed with the Commission in 1993.

1 to-day operation of such political party at the State level, as determined by the
2 Commission. 2 U.S.C. §431(15); 11 CFR 100.14. The definition of State committee also
3 requires the existence of a political party. The term "political party" is defined under 2
4 U.S.C. §431(16) and 11 CFR 100.15 as an association, committee, or organization which
5 nominates a candidate for election to any Federal office whose name appears on the
6 election ballot as the candidate of such association, committee, or organization.

7 The Commission has considered a variety of State party organizations in making
8 these determinations. Advisory Opinions 2000-14, 1999-26, 1998-27, 1998-24, 1998-2,
9 and 1997-29. In reviewing State party affiliates of entities that qualified as national
10 committees of political parties under 2 U.S.C. §431(14), the Commission has looked to
11 the existence of a State affiliate agreement which "delineates activities commensurate
12 with the day-to-day operation of [a political party] on a State level," and then concluded
13 that "[t]o the extent the relationship between [a political party] and an affiliate is based on
14 this agreement and the affiliate displays evidence of activity by obtaining ballot access for
15 both its Presidential and other Federal candidates, . . . [that] particular affiliate is a State
16 Committee of the [political party]." Advisory Opinion 1998-24. The Commission has
17 also granted State party committee status to organizations that were affiliated with
18 national political parties which had not achieved national committee status. State
19 committee status in these opinions was based on the existence of State bylaws detailing
20 activities commensurate with the day-to-day operation of a party on the State level, and
21 the placement of at least one Congressional candidate on the ballot. Advisory Opinions
22 2000-14, 1998-27, 1998-23, 1997-29, and 1997-7. In reaching this conclusion, the
23 Commission made clear that a State political party could qualify as a State committee

1 without an affiliation with any national political party organization and indicated that a
2 State party's candidate must be a candidate under 2 U.S.C. §431(2) in order for that party
3 to satisfy the second requirement.² Advisory Opinions 2000-14, 1998-27 and 1998-23;
4 see also Advisory Opinion 1976-95. The Commission has also granted State committee
5 status to a State affiliate of a qualified national party committee where its only Federal
6 candidates, as defined under the Act, were the Presidential and Vice Presidential
7 candidates of the national party. Advisory Opinion 1997-3.

8 As noted above, the Party's rules set out a comprehensive organizational structure
9 for the Party from the statewide level down through various local levels, and they clearly
10 identify the role of the Committee. Party rules, articles II, IV, and VII. As they delineate
11 activity commensurate with the day-to-day functions and operations of a political party on
12 a State level, the rules are consistent with the State party rules reviewed in previous
13 situations where the Commission has affirmed the State committee status of a political
14 organization. See Advisory Opinions 2000-14, 1999-26, and 1998-27. Again, the fact
15 that the Party is not affiliated with a recognized national committee, or other national
16 political party organization, does not prevent its recognition as a State committee of a
17 political party. See Advisory Opinions 2000-14 and 1976-95.³ Therefore, the
18 Commission concludes that the Party meets the first element.

² An individual becomes a candidate for purposes of the Act if he or she receives contributions aggregating in excess of \$5,000, or makes expenditures in excess of \$5,000. 2 U.S.C. §431(2). Federal candidates must designate a principal campaign committee within 15 days after qualifying as a candidate, and the committee also becomes subject to various registration, recordkeeping, and reporting requirements. 2 U.S.C. §§432(e)(1), 433, and 434(a); 11 CFR 101.1, 102.1, and 104.1.

³ The first non-major State party committee recognized by the Commission was the Liberal Party of New York in Advisory Opinion 1976-95. The most recent non-major State party committee to be recognized as a State committee of a political party was the Working Families Party of New York in Advisory Opinion 2000-14.

As indicated above, the second element for qualifying as a State committee of a political party, and an essential element for qualifying as a political party, is that the party organization actually obtains ballot access for its Federal candidates, as defined in the Act. The Federal candidate identified in your request, Representative Vito Fossella, was nominated by the Conservative Party in 1998 and received the Conservative party line on the New York State ballot in the 1998 U.S. House of Representatives election in the 13th Congressional District of New York. He has also been re-nominated by the Party and will again have the Party's line in the upcoming 2000 election. This candidate also registered his principal campaign committee and filed disclosure reports with the Commission. Further, the reports filed by Mr. Fossella's committee indicate that his 1998 Congressional campaign received or expended in excess of \$5,000, and it has also done so in the current 2000 campaign. Accordingly, the candidate meets the requirements of 2 U.S.C. §431(2).⁴ The affidavit provided by Mr. Fossella indicates his support of the Party's request for State Committee status. Accordingly, the Commission concludes that Mr. Fossella's candidate status is relevant to the Party's claim for State committee status, and the Party therefore meets the second element.

In view of the fact that both elements discussed in this opinion have been satisfied, the Commission concludes that the Committee qualifies as the State committee of a political party under the Act and Commission regulations.

⁴ Mr. Fossella was a "fusion" candidate in 1998 in that he also received the nomination of the New York State Republican Party. He is again seeking the New York State Republican Party nomination for the 2000 election. In past opinions, the Commission has concluded that "fusion candidates may be considered when reviewing a party's qualification for national committee status." See Advisory Opinions 2000-14 and 1998-2.

Sincerely,

Darryl R. Wold
Chairman

Enclosures (AOs 2000-14, 1999-26, 1998-27, 1998-24, 1998-23, 1998-2, 1997-29, 1997-3, and 1976-95).